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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MARILYNN SHCOLNIK,

11 Plaintiff,

12 v.

13 SELECT PORTFOLIO SERVICING,
14 LLC, et al.,

15 Defendants.

CASE NO. C15-0129JLR

ORDER REMANDING CASE TO
STATE COURT FOR LACK OF
SUBJECT MATTER
JURISDICTION

15 This matter comes before the court *sua sponte* following the filing of Defendant
16 Select Portfolio Servicing, LLC’s (“SPS”) notice of removal (Not. of Rem. (Dkt. # 1))
17 and Plaintiff Marilynn Shcolnik’s motion for a preliminary injunction (Mot. for Prelim.
18 Inj. (Dkt. # 5)). Having examined the complaint (Compl. (Dkt. # 1-1)), the notice of
19 removal, Ms. Shcolnik’s motion for a preliminary injunction, and the relevant law, the
20 court finds that it lacks subject matter jurisdiction over this action and therefore remands
21 the case to state court.

1 I. BACKGROUND

2 Ms. Shcolnik, who is proceeding pro se, filed this action in the Superior Court for
3 Snohomish County, Washington. (*See* Compl. at 1.) In her complaint, Ms. Shcolnik
4 alleges that she never signed the deed of trust that purportedly secures a loan against her
5 property, and that the deed of trust is therefore invalid. (*See, e.g., id.* ¶¶ 3.2-3.4, 3.24,
6 4.7, 4.9.) Defendants are now attempting to foreclose on her property using the deed of
7 trust. (*See, e.g., id.* ¶ 4.3.) A trustee's sale of her property is set for February 13, 2015.
8 (Mot. for Prelim. Inj. at 1; SPS Resp. (Dkt. # 8) at 1.) To prevent that sale, Ms. Shcolnik
9 filed with the Snohomish County Superior Court a motion for a preliminary injunction, a
10 hearing on which was set for January 29, 2015. (State Ct. Rec. (Dkt. # 1-3) at 2, 5-13.)

11 On January 27, 2015, SPS removed the case to this court. (*See generally* Not. of
12 Rem.) SPS invokes the court's subject matter jurisdiction on the basis of an alleged
13 federal question. (*See id.* ¶ 7.) Specifically, SPS asserts that Ms. Shcolnik's complaint
14 states a claim for relief based on SPS's alleged violation of the Fair Debt Collection
15 Practices Act ("FDCPA"), 15 U.S.C. § 1692. (*Id.*) The notice of removal identifies no
16 other grounds for subject matter jurisdiction.

17 On February 2, 2015, Ms. Scholnik filed with this court a motion for a temporary
18 restraining order (Mot. for TRO (Dkt. # 6)) and a motion for a preliminary injunction.
19 Neither of Ms. Shcolnik's motions explicitly requests remand; however, in both motions,
20 Ms. Shcolnik takes issue with aspects of SPS's removal. (*See* Mot. for TRO at 3; Mot.
21 for Prelim. Inj. at 4-6.) In particular, Ms. Shcolnik claims that she has not stated a cause
22 of action under the FDCPA; rather she has merely pleaded that SPS and Defendant

1 Northwest Trustee Services, Inc. (“NWTS”) violated the FDCPA. (*See* Mot. for Prelim.
2 Inj. at 5 (“[T]he complaint does not purport to state [a] FDCPA claim.”); *see also* Compl.
3 ¶¶ 7-7.11.) Because the notice of removal relies on the FDCPA allegations to support the
4 court’s subject matter jurisdiction (Not. of Rem. ¶ 7), the court now raises the issue of
5 whether subject matter jurisdiction exists over this case.

6 **II. DISCUSSION**

7 Federal courts are courts of limited subject matter jurisdiction. *See* Charles Alan
8 Wright & Arthur R. Miller, *et al.*, 13 Federal Practice and Procedure § 3522 (3d ed.)
9 (collecting cases). The removal statute is strictly construed against removal jurisdiction,
10 and a removing defendant bears the burden of establishing grounds for federal subject
11 matter jurisdiction. *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th
12 Cir. 2004). In general, federal jurisdiction exists when a claim either (1) arises under the
13 Constitution and laws of the United States, or (2) arises between citizens of different
14 states and the amount in controversy exceeds \$75,000.00. *See* Erwin Chemerinsky,
15 Federal Jurisdiction § 5.1 (5th ed. 2001) (listing other non-exhaustive categories of
16 subject matter jurisdiction); *see also* 28 U.S.C. §§ 1331, 1332. If at any time before final
17 judgment a federal court determines that it lacks subject matter jurisdiction over a
18 removed action, the court must remand the action. *See* 28 U.S.C. § 1447(c).

19 SPS argues that subject matter jurisdiction exists over this case because the
20 complaint asserts a claim for relief under the FDCPA and therefore the case arises under
21 the laws of the United States. (*See* Not. of Rem. ¶ 7.) A case does not arise under federal
22 law, however, if the complaint pleads only that a violation of a federal statute occurred,

1 but not that the defendants are liable to the plaintiff for such violation. *See Carew v.*
2 *Bank of America*, No. C14-0413RAJ, Dkt. # 24 at 2 (W.D. Wash. 2014). Here, it is
3 unclear whether the complaint contains a claim for relief under the FDCPA. Indeed, the
4 complaint states only that NWTS and SPS violated the FDCPA. (*See Compl.* ¶¶ 7-7.11.)
5 That phrasing contrasts sharply with the manner in which the complaint states its other
6 claims, all of which the complaint specifically labels “cause[s] of action.” (*See id.* ¶¶ 4-6,
7 8-9.) Moreover, the complaint fails to request relief specific to the alleged FDCPA
8 violation. (*See id.* ¶¶ 11.1-11.11.) As such, the language of the complaint creates doubt
9 regarding whether Ms. Shcolnik asserts a FDCPA claim.

10 Any doubt regarding the existence of an FDCPA claim disappears, however, upon
11 reading Ms. Shcolnik’s motion for a temporary restraining order. There, Ms. Shcolnik
12 expressly disavows any cause of action under the FDCPA. (*See Mot. for Prelim. Inj.* at
13 5.) She states that her complaint “does not purport to state [a] FDCPA claim.” (*Id.*
14 (“Plaintiff has not truly stated a Cause of Action under the FDCPA.”).) Accordingly, the
15 court interprets Ms. Shcolnik’s complaint as alleging that a violation of the FDCPA
16 occurred but not as stating a claim for relief on that basis. The complaint’s allegations
17 concerning the FDCPA are therefore insufficient to support this court’s federal subject
18 matter jurisdiction. *See Carew*, C14-0413RAJ, Dkt. # 24 at 2.

19 Furthermore, the court is unable to identify an alternative basis for subject matter
20 jurisdiction in this case. The complaint mentions no federal statutes beyond the FDCPA
21 (*see generally* Compl.); therefore, the court concludes that federal question jurisdiction is
22 not present here. In addition, it appears that diversity jurisdiction is lacking. Ms.

1 Shcolnik is a resident of Washington State (*see id.* ¶¶ 1.1, 2.2), and asserts that NWTS is
2 a Washington corporation (*id.* ¶ 1.5). Diversity jurisdiction, however, requires complete
3 diversity of citizenship. *See Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th
4 Cir. 2001) (“[E]ach of the plaintiffs must be a citizen of a different state than each of the
5 defendants.”). Because Ms. Shcolnik and NWTS are citizens of the same state, the court
6 cannot exercise its diversity jurisdiction in this case.

7 In sum, the filings in this case provide no basis for federal subject matter
8 jurisdiction. The case does not arise under federal law, nor does it involve parties who
9 are diverse in their citizenship. As such, the court must remand this case to state court.
10 *See* 28 U.S.C. § 1447(c).

11 **III. CONCLUSION**

12 For the foregoing reasons, the court finds that subject matter jurisdiction over this
13 case is lacking and therefore ORDERS as follows:

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- 1 1. Pursuant to 28 U.S.C. §§ 1447(c) and 1447(d),¹ all further proceedings in this
- 2 case are REMANDED to the Superior Court for Snohomish County in the
- 3 State of Washington,
- 4 2. The Clerk of the Court shall send copies of this order to all counsel of record
- 5 for all parties,
- 6 3. Pursuant to 28 U.S.C. § 1447(c), the Clerk of the Court shall mail a certified
- 7 copy of this order to the Clerk of the Court for the Superior Court for
- 8 Snohomish County, Washington,
- 9 4. The Clerk of the Court shall also transmit the record herein to the Clerk of the
- 10 Court for the Superior Court for Snohomish County, Washington, and
- 11 5. The Clerk of the Court shall TERMINATE all pending motions (Dkt. ## 5, 6)
- 12 and CLOSE this case.

13 Dated this 3rd day of February, 2015.

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17 JAMES L. ROBART
18 United States District Judge

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21 1 This order is not reviewable. 28 U.S.C. § 1447(d); *see also Cal. Dep't of Water Res. v.*
22 *Powerex Corp.*, 533 F.3d 1087, 1091 (9th Cir. 2008) ("[O]nly remands based on defects in
removal procedure or on lack of subject-matter jurisdiction escape our review.").